

No. 2481

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IN THE

United States
Circuit Court of Appeals
FOR THE NINTH CIRCUIT

MARY L. GIBBONS,

Petitioner,

vs.

J. S. GOLDSMITH, as Trustee in
Bankruptcy of the Estate of PAT
GIBBONS, Bankrupt,

Respondent.

No. 2481

In the Matter of PAT GIBBONS,
Bankrupt.

BRIEF OF J. S. GOLDSMITH, TRUSTEE.

McCLURE & McCLURE,
Solicitors for Trustee.

1509 Hoge Building,
Seattle, Washington.

Press of Pliny L. Allen, Seattle, Washington

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This proceeding should be dismissed, the proper proceeding being by appeal. We move that order be entered accordingly.

Hirlinger v. Boyd, 217 Fed. 546.

McCLURE & McCLURE,
Solicitors for Trustee.

ON THE MERITS.

The controlling question is, can a judgment against the husband alone, on a community debt, be enforced *prima facie* against the community property?

We think this question is no longer open to debate in the State of Washington.

In this case the marital community has existed for more than thirty years (Transcript of Record, page 17).

Debts contracted during that time are *prima facie* community debts.

Oregon Imp Co. v. Sagemeister, 4 Wash. 710, 30 Pac. 1058.

Calhoun v. Leary, 6 Wash. 17, 32 Pac. 1070.

Bryant v. Stetson etc. Co., 13 Wash. 692, 43 Pac. 931.

McDonough v. Craig, 10 Wash. 239, 38 Pac. 1034.

Abbott v. Weatherby, 6 Wash. 507, 33 Pac. 1070.

Bell v. Waudby, 4 Wash. 743, 31 Pac. 18.

Diamond v. Turner, 11 Wash. 189, 39 Pac. 379.

Lumberman's Nat. Bank v. Gross, 37 Wash. 18, 79 Pac. 470.

Young v. Porter, 27 Wash. 551, 68 Pac. 362.

Anderson v. Harper, 30 Wash. 378, 70 Pac. 965.

- Reed v. Loney*, 22 Wash. 433, 61 Pac. 41.
- Shuey v. Holmes*, 22 Wash. 193, 60 Pac. 402.
- Curry v. Catlin*, 9 Wash. 495, 37 Pac. 678, 39 Pac. 101.
- Peacock v. Ratliff*, 62 Wash. 653, 114 Pac. 507.
- Stewart v. Kleinschmidt*, 51 Wash. 90, 97 Pac. 1105.
- Bird v. Steele*, 74 Wash. 68, 132 Pac. 724.
- Woste v. Rugge*, 68 Wash. 90, 122 Pac. 988.
- Strom v. Toklas*, 78 Wash. 223, 138 Pac. 880.
- Johns v. Clothier*, 78 Wash. 602, 139 Pac. 755.
- Ballinger Community Property*, Sec 119.
- McKay, Community Property*, Sec. 335.
- Clark v. Eltinge*, 29 Wash. 215, 69 Pac. 736.
- Baker v. Murrey*, 78 Wash. 241, 138 Pac. 890.
- Way v. Lyric Theatre Co.*, 79 Wash. 275, 140 Pac. 320.
- Philips v. Langlow*, 55 Wash. 385, 104 Pac. 610.
- Shuey v. Adair*, 24 Wash. 378, 64 Pac. 536.

Property acquired during the existence of the community is *prima facie* community property.

- Lemon v. Waterman*, 2 W. T. 485, 7 Pac. 899.
- Yesler v. Hochstettler*, 4 Wash. 349, 30 Pac. 398.
- Mabie v. Whittaker*, 10 Wash. 656, 39 Pac. 172.
- Kromer v. Friday*, 10 Wash. 621, 39 Pac. 229.

Freeburger v. Caldwell, 5 Wash. 769, 32 Pac. 732.

Freeburger v. Gazzam, 5 Wash. 772, 32 Pac. 732.

Main v. Scholl, 20 Wash. 201, 54 Pac. 1125.

Abbott v. Wetherby, 6 Wash. 507, 33 Pac. 1070.

Hill v. Young, 7 Wash. 33, 34 Pac. 144.

Sackman v. Thomas, 24 Wash. 660, 64 Pac. 819.

Mattson v. Mattson, 29 Wash. 417, 69 Pac. 1087.

Woodland Lumber Co. v. Link, 16 Wash. 72, 47 Pac. 222.

Re Murphy's Estate, 46 Wash. 574, 90 Pac. 916.

Denny v. Schwabacher, 54 Wash. 689, 104 Pac. 137.

Fisher v. Marsh, 69 Wash. 570, 125 Pac. 951.

Patterson v. Bowes, 78 Wash. 476, 139 Pac. 225.

Williams v. Beebe, 79 Wash. 133, 139 Pac. 867.

Ballinger, Community Property, Sec. 19.

McKay, Community Property, Sec. 255.

Graves v. Graves, 48 Wash. 664, 94 Pac. 481.

Such property is subject to the lien of judgments recovered on community debts, and to sale on execution issued thereon.

2 Remington & Ballinger's Ann. Codes of Wash., Sec. 5918.

Curry v. Catlin, 9 Wash. 495, 37 Pac. 678.

Horton v. Donohoe-Kelly Banking Co., 15 Wash. 399, 46 Pac. 409, 47 Pac. 435.

Floding v. Denholm, 40 Wash. 463, 82 Pac. 738.

Allen v. Chambers, 18 Wash. 341, 51 Pac. 478, 22 Wash. 304, 60 Pac. 1128.

Thygeson v. Neufelder, 9 Wash. 455, 37 Pac. 672.

On principle the foregoing propositions should be sustained, the discharge in bankruptcy of the husband from the obligation of a community debt, discharging also the wife.

Bimrose v. Matthews, 78 Wash. 32, 138 Pac. 319.

And the wife's separate property is not subject to community debts.

Sweet Dempster & Co. v. Dillon, 13 Wash. 521, 43 Pac. 637.

The trustee, as to all property in the custody, or coming into the custody, of the bankruptcy court, is vested by operation of law with all the rights, remedies and powers of a creditor holding a lien by legal or equitable proceedings, and, as to all property not in the custody of the bankruptcy court, is vested with all the rights, remedies and powers

of a judgment creditor holding an execution duly returned unsatisfied.

Bankruptcy Act 1898, Sec. 47-a (Amend. 1910).

The trustee hereby adopts and makes a part of this brief the brief of the Dexter Horton Trust & Savings Bank, separately filed herein.

The order of the court below should be sustained.

Respectfully submitted,

McCLURE & McCLURE,
Solicitors for J. S. Goldsmith, Trustee.